THE MUNICIPAL WORLD

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The Municipal World

PUBLISHED MONTHLY

In the Interests of every department of the Municipal Institutions of Ontario.

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J. M. GLENN, K. C., LL.B. } Editors

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ST. THOMAS JUNE 2, 1902

The towns of Port Arthur and Fort William are moving in the direction of establishing municipal telephone services.

* * *

The council of the township of West Flamboro has recently passed a by-law commuting the statute labor in that township to a money payment of fifty cents per day.

* * *

A by-law to grant a bonus of $50,000 to the Deering Harvester Company was recently defeated by the electors of the city of Hamilton.

Independent Telephone Lines.

Independent telephone companies have made considerable progress in the United States, and Canada is beginning to awaken to the fact that telephone installation is no longer a monopoly. The Orillia Board of Trade has pronounced in favor of a municipal telephone system, an independent system is being projected in Orangeville, and local capital in Beaverton is likely to be invested in an independent exchange.

Toronto, Ottawa and Hamilton have all been more or less agitated in regard to the matter, and capitalists are seeking telephone franchises, in return for which greatly reduced rates are promised. The rates proposed in Hamilton are $15 for business places, and $10 for private residences. Telephone systems, installed by local capital, or by a municipality, in the smaller towns, require very little capital outlay, and there is every reason to believe that the day is not far distant, when, under local management, a telephone will be a part of the necessary equipment of every house.

Returns of Uncollected Taxes.

A subscriber, who is a county treasurer, has requested us to draw attention, in these columns, to the duties of municipal officers in regard to the making of the annual returns required by the provisions of the Assessment Act, of taxes uncollected and uncollectable, in their respective municipalities. In his communication, our correspondent says that "many of the returns are, in most of the cases, made by the collector direct to the county treasurer, or a copy of the list, under section 148, is sent." The sections of the statute, relating to this matter, are comparatively simple, and a reference to them on the part of the municipal officers having these duties to perform, should effectually preclude the possibility of their making any mistake. Section 147 provides that "if any of the taxes mentioned in the collector's roll remain unpaid, and the collector is not able to collect the same, he shall deliver to the TREASURER of his municipality an account of the taxes remaining due on the roll, etc." The latter part of this section requires the collector to furnish, at the same time, a duplicate of this account to the clerk of his municipality, who is thereby directed to mail a notice to each person appearing on the roll with respect to whose lands any taxes appear to be in arrear for that year. The collector cannot legally, and should not be credited with the amount of the taxes not realized until he has made out and filed with the treasurer of his municipality the account referred to in section 147, duly verified in the manner required by section 148. By section 157 the *treasurer of every township* and *village* is required to furnish the *county treasurer* with a statement of all unpaid taxes and school rates directed in the collector's roll or by school trustees, to be collected, within fourteen days after the time appointed for the return and final settlement of the collector's roll, and before the *8th day of April* in every year. Subsection 2 sets forth the particulars that this return is to contain. Section 156 lays down the duties of the collector in regard to the collection of *arrears of taxes* that have been placed on his roll, and provides that "if there is not sufficient distress upon any of the occupied lands or lands built upon (named in section 155) to satisfy the total amount of the taxes against the same, as well for the arrears as for the taxes of the current year, the collector shall so return it in his roll to the *treasurer of the municipality*, showing the amount collected, if any, and the amount remaining unpaid, and stating the reason why payment has not been made." A strict compliance with the requirements of the statute in this regard is essential to the validity of subsequent proceedings to realize the amount of the unpaid taxes. Failure to closely observe the several provisions of the statute relating to the matter is almost certain to result in loss and litigation, expense and confusion to the municipality concerned and its officers. In the cases of Deveril v. Coe (11 O. R., 222), and Donovan v. Hogan (15 A. R., 432), tax sales were held to be invalid by reason of the non-performance of the duties required by these sections. In the latter case, it was held that the duties of the assessor and the township clerk in this regard are *imperative* and not *directory* merely, and their proper performance is conditional to the validity of a tax sale, and in the former case Mr. Justice Armour remarked that "the substantial compliance with the provisions of these sections is a condition precedent to the right to sell non-resident lands for taxes. In the recent case of Caston v. City of Toronto, (30 S. C. R., 390), it was held that the provisions of section 135 (now 147) of the Assessment Act, in respect to taxes on the roll being uncollectable, providing for what the account of the collector in regard to the same shall show on delivering the roll to the treasurer, and requiring the collector to furnish the clerk of the municipality with a copy of the account are imperative. In the course of his judgment Mr. Justice Gwynne remarked that "It has been held by both courts (that is, the divisional court and court of appeal), and in this, I think, we must concur, whatever the result may be, that the duties prescribed in section 135 of chapter 193 (R. S. O., 1887) now section 147 of chapter 224 (R. S. O., 1897), are enacted as the basis and foundation of all subsequent proceedings which are authorized to be taken for the recovery of taxes not paid, while the roll remains in the collector's hands unreturned, and that, therefore, the requirements prescribed in the section are IMPERATIVE."

Mr. Donald Guthrie, K. C., recently gave an opinion to the County of Wellington, of which he is solicitor, as to whether parties who, without authority, make excavations, either by deepening ditches or otherwise on county roads, are liable in a civil action for damages, either to the county or to travellers, where the latter have suffered damage by reason of such excavations. In answer to this question he says that, in his opinion, where such travellers recover damages against the county by reason of such excavations, the county is entitled to a remedy over for the amount of such damages against the private individual who, without authority, made the excavation which caused the damage. In any action for damages, caused by such excavation, the plaintiff, on making out his case, would be entitled to recover against both the county and the party who made the excavation, but the county would have the right to recover the amount of judgment for damages and costs from the other defendant. The law provides, in such a case, that the municipality shall have the right to have the person who has made the excavation made a defendant in the action—if the plaintiff does not make him a defendant.

Municipal Officers of Ontario.

Clerk, Township of Hallam.

Mr. Mullin was born in the township of Cornwall in 1836. He was assessor of

MR. JAMES MULLIN.

the township of Hallam in 1862 and clerk in 1893 and in 1894, when he resigned. He was reappointed clerk in 1899. Mr. Mullin also conducts an extensive saw-mill, lumber and shingle business.

Clerk, Townships Laxton, Digby and Langford.

Mr. Butterworth was born in Oldham,

MR. E. BUTTERWORTH.

Lancashire, England, in the year 1837. He was educated in the national schools of his native land. He served his apprenticeship as a painter. He came to New Jersey, U. S. A., in 1858 and to Canada in 1859. He was councillor for the west side of Laxton for fifteen years and was appointed clerk in 1899.

Clerk, Village of Havelock.

Mr. Phillips was born in Norwood in 1867. He started a hardware business there in 1884 and moved his business to Havelock in 1888. He was appointed clerk in 1894 and treasurer in 1899.

Clerk and Treasurer, Village of Burk's Falls.

Mr. Bazett was born in Reading, England, in 1859 He was educated at St. Paul's College, Stoney Stratford. He came to Canada, in 1877 and was admitted as a Dominion and Ontario Land

MR. R. PHILLIPS.

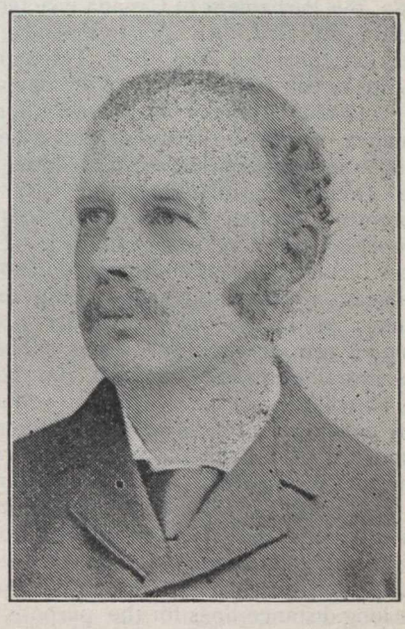
Surveyor in 1881. He lived for some years in Orillia and Midland, and came to Burk's Falls in 1885. He was, for some years, clerk of the township of Armour and was appointed clerk of the village of Burk's Falls in 1890 and treasurer in 1899. Mr. Bazett also conducts a large insurance business.

Clerk, Township of East Williams.

Mr. Stewart was born in East Williams in January, 1842. He engaged in farming in his younger days but his strength proving unequal to the work, he studied for and obtained a teacher's certificate and also took a course in the Commercial College and Shorthand Academy, in London. He taught school for sixteen years and was appointed clerk in 1899.

Rights of Bell Telephone Company.

In clause 2 of question number 136, in our issue for March of the present year, it is asked: "Has the Bell Telephone Co. power whereby it can erect telephone poles in towns without obtaining authority from the municipal council? We answered the question in accordance with the then



MR. E. BAZETT.

existing law. Since the printing of our March number Mr. Justice Street has handed out his judgment in the suit of the City of Toronto vs. the Bell Telephone Company of Canada. This judgment materially alters the law as it was formerly, and the following is a synopsis of it:

City of Toronto v. Bell Telephone Co.

MR. D. A. STEWART.

of Canada.—Judgment upon special case: (1) On April 29, 1880, the Parliament of

(Continued on page 96.)

Rights of Bell Telephone Company.

(Concluded from page 95.)

Canada enacted a statute intituled "An Act to Incorporate the Bell Telephone Company of Canada," 43 Vict. chapter 67; (2) on March 10, 1882, the Ontario Legislature enacted a statute intituled, "An Act to confer certain powers upon the Bell Telephone Company of Canada," 45 Vict. chapter 71; (3) on May 17, 1882, the Parliament of Canada enacted a statute intituled, "An Act to amend the Act incorporating the Bell Telephone Company of Canada," 45 Vict. chapter 95; (4) the company carries on a long-distance telephone business and a local telephone business in various places in the Dominion, including the City of Toronto, operated by means of lines of telephone, as hereinafter defined. The local business consists of furnishing communication between persons using telephones in a city, town or other place where a central exchange exists. There are central exchanges to which run both the local lines and the long-distance lines. Any person in Toronto may use the long-distance lines for the purpose of speaking to a person outside of Toronto, by going to a central exchange and paying the usual charge therefor, and any telephone subscriber in Toronto, desiring to speak to a person outside of Toronto, may use the long-distance lines for the purpose by having connection made with them through the central exchange, and paying such usual charge. In doing this he would use his own instrument and line to the central exchange, and the long distance line from there. The long-distance lines are not used in local business. A line or lines of telephone consist of poles with wires affixed thereto, or of conduits with wires carried through the same; (5) the defendants contend that under and by virtue of the statutes above mentioned, except as to any pole higher than forty feet above the surface of the street, or any wire less than twenty-two feet above the surface of the street, they have the right to construct, erect and maintain their line or lines of telephone along the sides of or under any public highways, streets, bridges or watercourses in the City of Toronto; that the assent of the city is not essential to the exercise of such right, and that if, after notice in writing, to the city, of the intention to construct, erect and maintain such line, the engineer or other officer appointed by the council, or the council, omits to give reasonable directions as to the location of the line or lines and the opening up of the streets for the erection of poles or for carrying the wires underground, and to supervise the work, the defendants may lawfully proceed with the work or may procure a mandamus or order of the court to compel the engineer or other officer of the council to give such directions; (6) the plaintiffs contend that the defendants have no right to construct, erect or maintain their line or lines of telephone along the sides of or under any public highways, etc., without first obtaining the consent of the municipal council, which consent the council may withhold, and if the council fails to consent the defendants cannot exercise such powers within the city; (7) the plaintiffs further contend that, in any event, the defendants have no right to construct, erect and maintain a line or lines of telephone along the sides of or under any public highways, etc., to carry on a local telephone business in the city, without first obtaining the consent of the municipal council; (8) the plaintiffs further contend that the statutes of the parliament of Canada, above referred to, do not confer upon the defendants the powers contended for by the company, but if they purport to confer such powers, they are to that extent *ultra vires*; (9) the plaintiffs further contend that, in any event, the line or lines of telephone can only be carried along the sides of or under any public highways, etc., subject to the control of such highways, etc., by the corporation, and subject to provisions for the protection of the public thereon, and in conformity with such terms, conditions and regulations as the municipality may from time to time enact or prescribe; (10) on the facts stated the court is asked to declare the rights of the plaintiffs and defendants in regard to the various contentions above stated. Held, that the power of the Canadian Parliament extends to the granting of charters of incorporation to companies with Canadian, as distinguished from Provincial, objects, and to declaring the objects of their incorporation. But, except in the case of companies incorporated for carrying into effect some of the heads mentioned in section 91 of the B. N. A. Act, the mere fact of a Canadian incorporation does not carry with it the right of interfering with property and civil rights in the different provinces in any way, no matter how strongly the objects of incorporation may seem to require such interference for their fulfilment. It is the work on the ground, and not the terms of the charter, which determine the question of legislative control, subject always to the power in reserve of the Canadian Parliament to assume authority over even purely local works, whether complete or contemplated, by declaring them for the general benefit: Reg. v. Mohr, 2 Cart, 257; Citizens' Insurance Co. v. Parsons, 1 Cart. 265; Colonial Building Co. v. Attorney-General for Quebec, 3 Cart. 118; Tenant v. Union Bank (1894) A. C. 45. It is to be observed that neither in the recital to the Provincial Act nor in the special case is it alleged that the works of the defendants connected the Province of Ontario with any other Province of the Dominion, or extended beyond the limits of this Province at the time the Act was passed. While the British North America Act, section 92, subsection 10, clause (c), provides for the declaration that certain works are for the general advantage of Canada, and gives to that declaration the effect of withdrawing such works from the legislative jurisdiction of the provinces, it gives no effect or meaning to a declaration that any particular Act of a legislature, or of parliament, is for the general advantage of Canada. There is, therefore, no special effect to be given to that part of the Dominion Act of 45 Vic., which declares the defendant's Act of incorporation to be for the general advantage of Canada. That Act must be treated as a legislative recognization of the defendant's original Act of incorporation, and, therefore, in effect as a practical reenactment of it. But, although it was within the power of the Dominion Parliament, upon assuming legislative jurisdiction over the defendants, to have declared the provisions of the Ontario Act, no longer binding upon them, they have not, in express terms, done so, and the defendants must, therefore, still be entitled to all the rights and subject to all the restrictions contained in it which are not found to be abrogated by absolutely inconsistent provisions in the Act of Incorporation. The clear intention of the Ontario Act is to forbid the defendants from carrying any poles or wires at all, along any street, without the consent of the council. Had the language in which this prohibition is contained, been more ambigous the subsequent provision as to streets along which telegraph poles had been erected would not have been without weight in construing it, but there is not sufficient ambiguity in the earlier language to justify a holding that it is to be controlled by the latter. The proper construction of these Acts is to treat the Ontario Act as conferring special rights upon the defendants in regard to their works in that province, and at the same time subjecting them to the necessity of obtaining the consent of the local municipalities to the use of the streets, while leaving to their Act of Incorporation its full operation in other provinces. Should this state of things be found unsatisfactory or unworkable, the Canadian Parliament, having declared the defendant's works and objects to be for the general benefit of the whole of Canada, has full power to amend their powers in Ontario as well as elsewhere. It should be declared that the defendants have no right to carry any poles or any wires (whether such wires are above or under ground) along any street in the City of Toronto without first obtaining the consent of the municipal council, but inasmuch as the Ontario Act does not make their power to carry their wires across streets dependent upon the previous consent of the council they may carry them accross the streets, either above or under ground, subject, in the latter case, to the directions of the council and its engineer or other officer, as to the location of the line and the manner in which the work is to be done, unless such directions shall not be given within one week after notice in writing, and subject to the other provisions of the Act of Incorporation. Judgment for plaintiffs with costs.

Engineering Department

A. W. CAMPBELL,
O.L.S., C.E., M.C.S., C.E.

Electric Railways.

The use of highways by electric railways is creating new problems with regard to the maintenance of roads. The number of charters now being sought indicates that this use of the highway will increase very largely in the near future. This means of travel and transportation is beneficial to the district through which the railway passes, especially the property immediately adjacent to the line of railway. In fruit districts the advantage is marked, in that perishable and tender products can be conveyed to the market with rapidity and careful handling. In other respects the advantages of the town, through this convenient means of transportation, become a part of country life; so much so, that suburban residences of business men are found considerable distances from the town, wherever electric railways exist. With these advantages come certain disadvantages and there are details connected with the maintenance of highways upon which electric railways have been constructed that require the attention of municipalities.

AGREEMENTS.

Agreements between electric railway companies and municipalities should be made as perfect as possible. All possible contingencies should be provided for by the municipality. Good judgment is needed in discriminating between what is necessary, to safeguard present and future public interests, and that which may reasonably be omitted as an unnecessary restriction. Much care should be exercised in drawing up these documents to see that all the essential conditions are clearly and fully covered. In dealing with these matters the experience of other municipalities should be sought.

LOCATION.

The natural location for an electric railway would appear to be, in most cases, along the public highways. Here it is most convenient for the public using the cars, and the railway companies naturally benefit by the greater amount of traffic which thereby arises. One of the chief merits of the electric railway is that it passes close to one's door, and that the cars can be stopped at any point to let passengers on and off.

From this occupation of the common road by electric cars, the principal difficulties arise.

Where these railways, as is commonly the case, are laid on the graded and travelled portion of the hignway, the width of roadway for ordinary traffic is confined to a narrow strip. Surface drainage from the road to the side-drain, is interrupted by the railway track, and the expense of maintaining the road is increased.

During the time of snow-roads, when the roads are drifted and the snow is deep, the snow thrown from the railway track by the snow-plow is piled high on the sleigh road, and difficulties are experienced, varying with the nature of the snowdrifts. Where wire fences exist, the tendency at all times is for the sleigh road to pile up to an inconvenient height. When, alongside this, the snow from the railway track has been plowed out down to the surface of the rails, the sleigh road is left in a dangerous condition.

The rails in the roadway, the poles and wiring at times cause a certain obstruction to the free use of the highway, from which accidents occur. An element of danger arises from the frightening of horses by electric cars, interfering much with the ordinary use of the highway.

In some cases, as road improvement progresses, the grade of the road may have to be altered, necessitating the raising or lowering of the railway tracks. Openings may be needed under the track for culverts or drainage.

All of these are details which are more or less affected by the location of the tracks. As has been pointed out, the roadway offers mutual advantages both to the company and to the public. Moreover, property owners would, as a rule, object to placing the railway to the rear of their residences, across the farms, thereby cutting up the fields.

It has been suggested that the railway companies could purchase a narrow strip in front of the farms and adjacent to the highway, so that the present fences might be moved back the necessary distance, the railway being on its own right-of-way. By this means certain difficulties are lessened if not removed. The maintenance of the common road is not interfered with. Responsibility for accident is definitely removed from the municipality, danger of accident is lessened, and the ordinary use of the highway is less interrupted. On the other hand, the sale of such a strip from the farms changes their boundaries, to which their might be a feeling of opposition, while the control of the railway would be less definitely within the jurisdiction of the municipality.

The roadside, between the open ditch and the fence, is, in many cases, the location best adapted to all interests.

SCOPE OF AGREEMENTS.

Local circumstances will, in all cases, suggest the scope to be covered in regulating the use of highways by electric railways. In general, the roads which may be occupied should be specified.

The location of the tracks on the highway should be distinctly specified as a rule, by stating the distance the inner rail shall be placed from the centre of the road allowance. The placing of switches or turnouts, the laying of tracks across the road, the obstruction of the road in construction, or in making repairs, should be regulated.

The company should make provision for private crossings, present and future, so that property owners may have free access to their land.

The class of construction to be adopted should be specified, the weight and kind of rail to be used, etc.

The company should construct and operate the railway so as not to interfere with ditches or watercourses, nor prevent their future construction under the Ditches and Watercourses' Act, or by the municipality. In certain cases the cost of the necessary work under the track should be borne by the company.

A company will frequently select the side of a road least subject to interruption by snowdrifts. Provision should be made for the removal of snow and ice from the railway tracks, and for the method of disposing of it.

The maintenance of the roadway between the companies' tracks and adjacent to them should be considered.

The erection of poles, wiring, etc., should be within the control of the municipality, and accidents therefrom, as obstructions to the highway, should be definitely assumed by the company.

The municipality should be relieved from responsibility for accident of all kind arising from the construction of the railways and the operation of cars thereon.

Provision should be made for the strengthening, construction and maintenance of new culverts and bridges.

Provision should be made for opening the roadway when necessary, under and adjacent to the track, by the municipality, by a property owner, and by the company.

To no other industry can the old adage that "a stitch in time saves nine," be better applied than to road-building. The smallest hole or depression will soon become a large and expensive one to repair, if neglected. If, on the appearance of depressions, a few shovelfuls of gravel or broken stone are deposited, the passing traffic will soon settle the material in place; but, with neglect, the hole or depression increases in size at an astonishing rate, as water will invariably collect there after rains, will soak into the road, soften the roadbed, and the horses' hoofs will do the rest.

A sure index to the weakest parts of a road is its condition after a heavy rain. Careful examination of those parts of the roadbed where the water collects should be made, with a view to draining the same, either by the placing of proper culverts or ditches, or by leveling up the low spots.

Specification for Concrete Abutment.

(1) The abutments shall be built in accordance with the dimensions indicated upon the plans and drawings hereunto attached and forming part of these specifications.

(2) Concrete referred to in this specification shall be known as "fine concrete," and "rubble concrete." Unless rubble concrete is definitely specified, fine concrete shall be used.

(3) The abutments are to be erected within a substantial and well constructed framework of well fitted lumber, closely boarded up against the work as it proceeds. Care shall be taken to make a smooth regular surface, such that moisture will not find lodgment. The concrete shall be perfectly rammed into place so that all surfaces shall be smooth, without cavities, when the casing is removed. The casing shall not be removed in less than fourteen days from the completion of the work.

(4) Fine concrete shall be composed of one part by measure of Portland cement, two parts by measure of sand, and four parts by measure of broken stone. The concrete shall be mixed in a water-tight box or platform, placed close to the work, by first spreading evenly a layer of sand; upon this shall be evenly spread the proportionate quantity of cement, and the two thoroughly mixed in a dry state. To this water shall be added, and the whole thoroughly mixed and brought to the consistency of a stiff mortar. The proportionate amount of stone shall then be spread evenly over the mortar, and thoroughly intermixed therewith. The concrete, when mixed as described, shall be immediately put in place, and thoroughly pounded and rammed until it is perfectly and uniformly solid, moisture appearing on the surface.

(5) Within the body of the abutments of culverts, of not less than four foot span, but not nearer than six inches to the surface in any direction, large stones may be placed by hand in layers, to form rubble concrete. The stones shall be in "rack and pinion" order, and not less than two inches apart. Fine concrete shall be carefully inserted between the stones thus placed, and thoroughly packed and rammed so as to fill all voids. Fine concrete shall cover each layer of stones to a thickness of half the depth of the stones, when another layer of stones may be placed. A facing of fine concrete is at all times to be kept at least six inches higher than the rubble concrete; and shall be united with the rubble concrete so as to form a continuous and solid mass. This outer rim of fine concrete shall precede the placing of the rubble work within, and shall be placed around the interior of the casing to a height of nine inches, and a thickness of six inches. It is to be thoroughly pounded so that no cavities shall remain when the outside casing is removed. In no instance is the rubble concrete to extend higher than one foot below the top of the abutment, which top of the abutment shall be finished with concrete.

(6) All cement employed in the work must be of a favorably known brand of Portland cement, and approved by the superintendent in charge of the work. It shall be delivered in barrels or equally tight receptacles, and after delivery must be protected from the weather by storing in a tight building, or by suitable covering. The packages shall not be laid directly on the ground, but shall be placed on boards raised a few inches from it.

(7) The stone used shall be granite, quartzite, fine-grained limestone or other equally strong and durable stone, care being taken to exclude soft limestone, friable sandstone, and stone affected by the atmosphere. It shall be broken for fine concrete into varying sizes, the largest to pass, anyway, through a two-inch ring. The sand shall be clean, sharp, silicious, and of varying sized grain. The water used shall be clean, and care shall be taken not to use an excessive amount, the concrete when mixed and ready for the work, to have the consistency of freshly dug earth.

(8) When gravel is used in making "fine" concrete, it shall be clean, free from clay, loam or vegetable matter, nor shall it contain stones, any diameter of which exceeds two inches. It shall first be thoroughly mixed in a dry state, with Portland cement, in the proportion of six parts, by measure, of gravel, and one of cement. To this water shall be added, and the whole again thoroughly intermixed, the consistency and manner of placing in the work to be in accordance with all portions of this specification applicable thereto.

Where the gravel contains an excessive amount of sand, loam or other objectionable material, it shall be screened to remove all sand and earthy matter; if necessary it shall be well flushed, the dirty water being allowed to run off. The gravel so treated may then be mixed with sand and cement, as prescribed in section four (4) of this specification.

(9) While the work is in progress, it shall be so arranged that a steady supply of mixed concrete shall pass from the mixing-box to the point where it is to be placed. At any time when the work is interrupted before its completion, or at the end of the day, a wet covering shall be placed over the last layer of concrete; before the work of depositing the concrete is resumed, this surface shall be thoroughly flushed with water, to remove any foreign material which may have gathered thereon. No concrete shall be laid in wet or freezing weather.

"We should not have a dissatisfied agricultural population, worried by debt and harassed by care, so that any demagogue with a promising nostrum is listened to with enthusiasm and respect; we should not have the countryside suffer because of a lack of labor, and the poor in the crowded cities suffer from a lack of work."

Curbing.

Curbing is not a thing of beauty, but an unfortunate necessity. It is not placed on park drives, where it would serve little purpose, but only on streets, where it is needed to define the roadway, and to protect the gutter and boulevards. Curbing has its chief uses on business streets where there is much traffic. Vehicles stand at the edge of the roadway, and without a curb the treading of horses and the cutting of wheels would do much injury. The usefulness of a curb is less on residential streets, where the use of the side of the roadway is much less than on business streets. On little used suburban streets, with a macadam or gravel roadway, where the houses are a considerable distance apart, and where there is little likelihood of the boulevard being injured by vehicles or horses, the curb may be omitted to advantage.

The materials commonly used for curbing are stone flags, about five inches thick, three feet long, and eighteen inches deep; plank, usually cedar, attached to short posts; and concrete. Stone curbing, set, costs about forty cents per lineal foot; plank curbing about seven cents, and concrete about eighteen cents. The type of concrete curb laid at this cost is sixteen inches deep, four inches wide on top, widening to a base of eight inches. Curbs should be carefully set, the earth thoroughly tamped below and around them. If carelessly placed, they will quickly get out of line and have a far from pleasing appearance. Stone curbs are very desirable in respect of appearance, but concrete makes an exceedingly good substitute, and while the initial cost exceeds that of plank, the greater durability will make it, in a term of years, much more economical than timber.

When poor roads prevail in any section, everything else is very apt to be poor—the farmer, the horse, the merchant, the schools. Every day that the public roads are allowed to remain in a poor condition, and the streams to remain improperly bridged, the community deals a direct and severe blow to its own interests, and the country will remain undeveloped, its hidden treasures locked up. These roads, if improved and properly engineered, with permanent bridges constructed, would give some permanence of settlement, and of contentment; they would induce new settlers to remain, the burden of tax would rest upon so many that the roads would be almost self-sustaining; the saving in horses and running gear would be enormous, and the increased loads that could be sent to market, with a decreased power for draught, would form a substantial increase to the farmer's income. In short, there are few blessings that any community can know equal to that of having first-class roads.

Burnt Clay for Highways.

For a number of years, in several of the central states, Illinois, Iowa, Missouri and others, burnt clay has been extensively used for railroad ballast, and, to a less extent, for surfacing common roads. For railroad ballast this material is said to be superior to broken stone, but for common road certain hard qualities are preferable. As with brick making, only certain qualities of clay are suitable, but the success of vitrified brick-paving certainly suggests the suitability of the more roughly prepared clay as a good substitute for stone or gravel where the latter materials are not available. Climatic conditions would no doubt have to be considered, and it will have to be learned whether the material found so suitable in the south would be equally durable when subjected to the severe tests of a northern winter. Of the use of burnt clay by railroads, or "gumbo" as it is locally termed, the Review of Reviews says :

The railroads handle the clay and carry on all operations connected with its burning by machinery. The burnt gumbo, ready for use, can be delivered on board the cars at a cost of twenty-five to thirty-five cents a cubic yard. When burned by hand, as would usually have to be done in highway improvement, the cost would be perhaps ten to fifteen cents more. The railroad gumbo pits are often a mile or two long and hundreds of feet wide. In the case of the highways, the mud would merely have to be shoveled out of the roadway, burned and shoveled back.

While for macadamizing purposes on country roads burnt gumbo is not quite as durable as some of the best grades of rock, it has many advantages to offset this one shortcoming, slight as it is. The process of producing burnt gumbo requires practically no capital or great skill to carry on. The most ordinary labor and a little common sense on the part of one person, as overseer, can produce the best of results. Of course the road should be properly graded and crowned before putting on the gumbo road-metal. A surface of burnt clay, six to eight inches in thickness, is commonly sufficient for good results ; or ten inches in particular places, where unusual conditions exist or traffic is especially heavy.

With no more expenditure of money and effort than is now put on the country roads, ballasting with burnt clay would produce in a dozen years a system of highways equal to any of those for which France has so long been famous.

A burnt gumbo road is never muddy, for that property is lost in the burning. The surface of the road is hard and smooth. As a speedway for bicycles and automobiles, it is ideal. For carriages and heavy wagons, it has no superior. No vegetation can grow on it. It is practically free from dust after the highway system has been well developed, so that mud is not brought in from the tributary roads. Moreover, the warm, red highways contrast pleasantly against the green landscape at those seasons of the year when country drives are most enjoyable.

The process of burning clay is quite simple. Along the roadside cord wood is piled ten feet wide. On this is thrown three or four inches of coal slack and twelve inches of gumbo mud, which is cut from the roadway or a pit, as the case may be. On firing the wood, enough air enters the pile to enable slow combustion to be carried on without the generation of too much heat, which would vitrify the clay.

When a "pit" is made, as often is necessay when burnt gumbo has to be hauled some distance, or, as is the usual way with railroads, new additions of slack and mud are added each day on one side of the pyramid, while on the other side the burnt gumbo is allowed to cool and is then carried away. In this way the pit advances sideways a few feet a day until it has become several hundreds of yards across.

The gumbo clays have many notable qualities, besides being excessively sticky in wet weather, enabling them to be readily distinguished. They usually form what the farmer calls cold, sour soils. These soils cannot be tilled to advantage. The land occupied by them is almost worthless, except, perhaps, for scant pasturage at certain seasons of the year. The clays absorb and are capable of retaining an immense amount of water, often as much as twenty-five gallons to a cubic yard.

Permission to locate a railroad ballast pit on some farmer's gumbo land is usually readily obtained. He not only gives his consent and the use of the land free, but he is secretly delighted at the idea of having the railroad excavate, without cost to him, a big pond for his stock. The best clays for making burnt ballast are distinguished by certain physical properties. They are very plastic, quite impure, very fine-grained and tenacious. Their strength is enormous, often as high as four hundred pounds to the square inch. The shrinkage is very great — ten to twelve per cent.— in the drying and burning process. These are the technical tests for recognizing these clays. A ready, practical test is to find the very worst stretch of muddy country highway.

John Gilmer Speed, in an article on the question of "The Common Road as a Social Factor," says :

"If the common roads had been properly laid out, constructed and attended to, and their development had kept pace with the development of other highways, I suspect that we would now have other problems to solve than those that confront us."

Not alone does the farming or country community reap the benefits of the good roads. Money paid out among the farmers is applied to the fountain-head of all business, and from there it will ultimately flow downward, filling all the channels of trade, production and finance. The commission men in our cities, handling the immense output of fruit from our orchards ; the grain brokers, buying and shipping our wheat ; transportation companies, shipping the products of the farm by rail and water ; the wagonmakers and implement dealers supplying the farmer ; the commercial world trading with the farmer ; the public at large enjoying the benefits of good city markets, accessible from the country, where fresh farm produce can be purchased at reasonable rates ; the wheelman, the tourist, the owner of riding and driving stock, or horseless carriages, all will receive their full share of the benefits.

* * *

It is difficult to arrive at any fact in dollars and cents, relative to the effect of improved public roads upon the value of land or other economic condition, but the effect of such roads now, and for so long in existence, is seen on every hand, and the influence felt in the English mode of life. Englishmen, be they of the gentry or of those in the humbler walks of life, seek their pleasure in, and gladly betake themselves to, their country homes. The one medium of this pleasure, so natural to all men, is the solid roadbed over which one can walk, or drive with equal comfort or pleasure any day in the year.

* * *

Of France it is said : "The road system of France has been of far greater value to the country, as a means of raising the value of lands, and of getting the small peasant proprietors in easy communication with their markets, than have the railways. It is the opinion of well-informed Frenchmen who have made a practical study of economic problems, that the superb roads of France have been one of the most steady and potent contributions to the material development and marvelous financial elasticity of the country.

* * *

Viewing the question of road improvement from whatever side one will, its financial advantages can be so strongly set down in facts and figures that they are bound to appeal to any one. When we consider that practically every pound of freight carried by our railroad and steamship lines has previously had to undergo transportation over our roads in one form or another, is it any wonder that the greatest railway financiers and managers are strongly in favor of the good roads movement, and are willing to lend a helping hand to those communities who are alive to their own interests, and who wish to rise up and throw off the yoke of the demon mud.

Question Drawer.

Subscribers are entitled to answers to all Questions submitted, if they pertain to Municipal Matters. It is particularly requested that all facts and circumstances of each case submitted for an opinion should be stated as clearly and explicitly as possible. Unless this request is complied with it is impossible to give adequate advice.

Questions, to insure insertion in the following issue of paper, should be received at office of publication on or before the 20th of the month.

Communications requiring immediate attention will be answered free by post, on receipt of a stamp addressed envelope. All Questions answered will be published unless $1 is enclosed with request for private reply.

Opening of New Road.

280.—J. A. L.—The municipality wants to open a road in a main line, a part of which is already open. The two parties object to it, and ask unreasonable prices. One claims that the lands reserved for roads is already taken off his land, and the other has no reason whatever. What should we do?

We gather from the language used that the corporation has to acquire land from private individuals to complete the opening up of this road. If this be so, and the council and the owners cannot agree upon the price to be paid by the former to the latter, arbitration proceedings will have to be instituted, pursuant to section 437 and following sections of the Municipal Act. If, on the contrary, the line of the road is an original road allowance, and the private parties are in possession of it, the council may pass a by-law for the opening of these portions thereof, and proceed to open them, and render them in a reasonably fit condition for travel. If the case is one within the provisions of section 642 of the Act, the requirements of this section and section 643 should be observed.

Is Notice of Appeal to Court of Revision Required?—Time of Filing.

281—H. E. M.—Will you tell me whether a municipal council has power to entertain appeals against assessments made by a ratepayer who did not notify clerk within fourteen days after being served with his assessment slip by the assessor. As you will understand that provision is marked on every assessment slip. My opinion is that it is marked there for the special purpose of giving council a chance to defend such appeals brought before them. Some of our council contend that we have no power to entertain such appeals unless the ratepayer appealing did notify clerk within the limit of time mentioned on slip. I am aware that we need not hear such cases where clerk has not been notified if we do not wish to. Now, what I want to know is, have we power to entertain cases where no notification has been given?

A ratepayer is not required by the statute to notify the clerk of an appeal against the assessment roll within fourteen days AFTER BEING SERVED WITH HIS ASSESSMENT SLIP BY THE ASSESSOR. Nor is such a notice written or printed on the slip if it is in the statutory form. This notice of appeal should be filed within fourteen days from the date fixed by law for the return of the assessment roll, or within fourteen days after the return of the roll, if it is not returned within the time fixed for that purpose. The date filled in, in the assessment slip, should be the day on which the roll is required by law to be returned. See subsection 2 of section 71 of the Assessment Act. The court of revision has no authority to entertain an appeal or direct an alteration of the roll as a result thereof, unless this notice has been given within the time required by law. The latter part of subsection 4 of section 71 provides that "no alteration shall be made in the roll unless under a complaint FORMALLY MADE, according to the above provisions." Had it been the intention of the legislature to authorize a court of revision to entertain and adjudicate upon a complaint against the roll, when no appeal had been filed as required by law, the Assessment Act would contain a provision similar to that enacted by the latter part of section 33 of the Drainage Act (R. S. O., 1897, chapter 226), which is that "the court (*i. e.*, a court of revision on a drainage by-law assessment) may, THOUGH SUCH NOTICE OF APPEAL HAS NOT BEEN GIVEN, by resolution passed at its first sitting, allow an appeal to be heard on such conditions as to giving notice to all persons interested or otherwise, as may be just."

Who Should Pay Expense of Disinfecting?

282—R. A. S.—A owns a lumber shanty in which Indians were living. They took smallpox and left the shanty while sick. The board of health ordered the shanty disinfected. Who has the right to pay for disinfecting the shanty, the owner of the shanty or the township?

By section 81 of the Public Health Act, it is provided that if a local board of health is of opinion that the disinfecting of any house is necessary, they shall notify the owner to cleanse and disinfect such house, within a time specified in the notice. If the owner fails to comply with the requirements of the notice, under section 82, he is liable to a penalty of not less than 25c., nor more than $2 for every day during which he continues to make default, and the local board of health shall cleanse the house, and may recover the expense incurred from the owner in default in a summary manner. If the board of health followed the requirements of the Act, the owner of the shanty is liable for the expense incurred.

Powers of Court of Revision.

283—H. N.—Has a municipal council power to raise or lower an assessment on a ratepayer without an appeal from a ratepayer?

No.

Rights of Purchasers of Lots on Closed Streets.

284—J. F.—Our town has been incorporated for about twelve years, but before it became incorporated the municipal council of the township gave Hall street, which was rough and hard to open up, in lieu of a street called Agnes street across several lots and joining Hall street again. Hall street was given to A and part of the property which Agnes street crosses belonged to A. A sold the property to B some ten years ago, which property on Hall street was surveyed in five acre lots but is now being divided into smaller lots for building purposes, and as Hall street has been given away there is no way for parties buying the small lots along the street to get out. I understand the exchange of property was made by by-law of the township council, but doubt if the necessary notices, etc., were considered. Under these circumstances, can the town council now make B open Hall street? He says if they do he will close Agnes street, which has been used for fifteen or eighteen years and money spent on it every year by the council, or make the town pay $100 for Hall street. I have drawn a plan of the streets and enclose same. Kindly give the matter your consideration.

This appears to be a case coming within the provisions of section 641 of the Municipal Act. Even if the preliminary proceedings mentioned in this section were not observed prior to the carrying out of the arrangement with A, we do not think the existing state of affairs can now be interfered with. If a by-law was passed by the council, adopting and confirming this arrangement, it cannot now be quashed or set aside, since proceedings to accomplish this were not taken within one year from the date of the passing of the by-law. (See section 379 of the Act.) No injustice will thus be done the purchasers of the lots fronting on what was Hall street, as they made their purchases with a knowledge of the fact that this street was no longer a thoroughfare, and available for ingress and egress to and from the lots purchased.

Service of Notice of Appeal to Court of Revision—Payment of Expenses of.

285—H. E.—In the enclosed list of appeals do you think it necessary for the clerk, either personally or by some one under his direction, to serve a notice on each appellant at his place of residence or place of business, he or they residing in the municipality? And if personal service is necessary, should the clerk be paid specially for the same, his agreement with the council not specifying his duties particularly.

Appeals to be heard at the Court of Revision, to be held at the Town Hall, H, on Saturday, May 31st, 1902.

APPELLANT.	RESPECTING WHOM.	MATTER COMPLAINED OF.
John Bear..	Self	Wrongly assessed for dogs.
Sam'l Henry	Self	Overcharged on lands.

H. E.,
Township Clerk,
D.

The statute (subsection 10 of section 71 of the Assessment Act) does not require the clerk to do this work himself, but says that he "shall CAUSE the notice to be left at the person's residence or place of business," that is, that he shall employ someone to effect the necessary services. The person thus employed should be paid such sum as the council considers reasonable. If the clerk has

time to and does this work, we see no objection to his being paid a similar sum in addition to his salary, unless at the time of his employment it was agreed that the salary he was to receive was intended to cover the costs of such services, and it was so specified at the time. It is doubtful, however, whether appellants—that is, persons filing appeals—whether in respect of their own assessments or otherwise, should be served with the notice mentioned in subsection 9 of this section, and we do not think it is necessary or required by the statute. These persons know there are appeals pending in respect of their assessments or otherwise, having filed them, and from the notice the clerk is required to publish, and should inform themselves as to the date of the sittings of the court of revision, at which they will be heard.

Statute Labor in Unorganized Territory.

286—W. J. E —Having established a road commission in the township of H., District of Nipissing, we wish to know :

1. Whether those persons who hold lots here but live in another part of the country, can be compelled to pay their share of the road-work ?

2. If so, how would it be advisable to go about it ?

3. Can the road commission appoint a secretary and treasurer, and pay them out of the commutation money ?

4. Can the commissioners reimburse themselves out of the commutation money for time spent on commission in excess of stated number of days ?

5. Must the commutation money be applied to any particular beat, or may it be applied for good of whole township ?

1. Yes. Section 123 of the Assessment Act makes no distinction between resident and non resident owners or locatees of land in unorganized townships, as to their liability to the performance of statute labor in accordance with the scale mentioned in that section.

2. These parties should be given six days' notice, pursuant to section 127, to perform the statute labor with which their lands are properly chargeable under section 123, and if they neglect or refuse to comply with such notice, they are respectively liable to the penalty mentioned in section 127 of the Act.

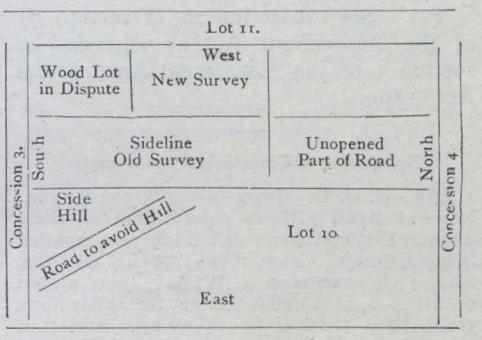
3. No.

4. Yes. See section 124 of the Act.

5. Section 121 of the Act provides that "the commissioners shall meet within a fortnight after their election, and shall then, or as soon thereafter as may be, *name the roads and parts of roads upon which statute labor is to be performed*, and shall appoint the places and times at which the persons required to perform statute labor are to work." If parties, instead of performing their statute labor, commute therefor, pursuant to section 125, the commutation money should be expended in the locality which would have received the benefit of the statute labor had it been performed.

A Disputed Road Allowance.

287—I have made a sort of diagram of this. Please note the curve in road leading to concession line. Some years ago our council tried to buy the curve but could not and then continued the road south in line with original survey, which ran through a bush, sold the timber and made the road, altogether about twenty-six rods. Now the new survey takes the road about three rods to the west of old line. The parties to the east of road made claim on account of timber sold in first instance, which we have met, which, under original survey, there would have been no claim. The party on the west, on lot 11, from whom the timber is being taken has sent us a lawyer's letter forbidding us to cut the timber, which was sold to be cut next winter. The timber was sold for the sum of $57, $37 going to claimant on lot 10. The road spoken of is an original road allowance. Should we pay any attention to the lawyer's letter received ?



This appears to be a question of locating the proper line of an original road allowance. If the new survey is the correct one, and properly locates the original road allowance, the course pursued by the council in regard to the timber disposed of in the line of the old survey is the right one, and it has authority to pass a by-law for selling the timber on the line of the new survey (pursuant to subsection 7 of section 640 of the Municipal Act) and to open the road, without incurring any liability to the party on the west for the value of the timber sold or otherwise. If the case is one which falls within the provisions of section 642 of the Act, the party on the west should be given the notice mentioned in section 643.

A General Appeal Against the Assessment Roll Cannot be Legally Made.

288—P. S. 1. Two ratepayers of the municipality of D, A & A jointly handed in an appeal against the whole assessment of the municipality, because "they consider the assessment unfair and impartial." Both appellants are satisfied with their own assessment, but claim that a number of other owners of real estate are assessed far too low, compared with their assessment, while others are rated for far less cleared land than the appellants claim, those neighbors really have, and are, therefore, not going to bear their proper share of the taxes which will, next fall, be levied upon the property owners of the municipality unless the assessment is more equalized at the court of revision. The appellants admit that they are only aware of a number of flagrant cases of what they consider impartiality in the neighborhood in which they reside, and though they examined the assessment roll carefully they cannot tell if more than seventy-five per cent. of the property holders assessed, which live at some distance from them in the thinly settled townships which compose this municipality, are correctly assessed or not. Under those circumstances have those parties acted right and legal to appeal, in a general manner, against the assessment of the whole municipality, or should they not have only appealed against the assessment of those whom they believe to have been favored or improperly assessed ?

2. Will it be the duty of the members of the court of revision to act on the appeal and go over every item on the assessment roll and consider or decide upon every individual assessment, or should they only consider the assessment of those who may be pointed out, or specially referred to by the appellants, or any other ratepayer present at the court of revision ?

3. Will it be my duty, as township clerk, to notify every resident individual person assessed, by special notice, delivered on their premises, of this general appeal, or would a number of public notices posted in a number of the most conspicuous places in the municipality, be sufficient ?

Our court of revision will be held on the 31st day of May.

1. No.

2. The court of revision has no legal authority to act upon this appeal in any way, other, perhaps, than dismissing it.

3. No. You are called upon to notify only parties who are specifically appealed against by name, and, in this case, this has not been done. The posting up of public notices is not required, nor would it be legally sufficient in any event.

Reeve and Councillors May be Road Commissioners.

289—CLERK.—Our council and reeve are road commissioners in the township. A grader is purchased, and each commissioner proposes to operate the grader so many days in his respective division, at so much per day. Will R. S. O., chap. 223, s. 537, (a) not prohibit them from doing this ?

We are of opinion that the clause and section you quote authorize the reeve and councillors to act as commissioners for doing the work mentioned, as it provides that "NOTHING in this Act shall PREVENT any member of a corporation from acting as commissioner, superintendent, or overseer, over any road or work undertaken and carried on in part or in whole, at the expense of the municipality ; and it shall be lawful for the municipality to PAY such member of the corporation acting as such commissioner, superintendent or overseer."

Fees of the Clerk of the Peace on County Audit.

290—COUNTY COUNCILLOR.—The Clerk of the Peace is allowed, under R. S. O., chap. 101, item 75, for "receiving and filing accounts and demands preferred against the county, numbering them and submitting them for audit, and making out cheques, $4.00."

Should the board of audit allow eight cents each for filing affidavits, declarations and certificates attached to the above accounts ?

We presume that the clerk of the peace bases his claim to this allowance on item No. 85 of the tariff of fees appended to chapter 101 (R. S. O., 1897). We are of opinion, however, that it is not properly chargeable or allowable to him, as "accounts and claims against the county" are specially excepted from the operation of item 85, and that the words "accounts and demands" in item 75 include any affidavits, declarations or certificates attached to them for purposes of verification.

Payment of Assistant to Medical Health Officer.—Barbed Wire Can be Made a Lawful Fence.

291—SUBSCRIBER.—1. At the first meeting of our board of health, the medical health officer reported one case of supposed small-pox, and he asked the advice of the board as to sending to London for Dr. ..... to visit the case. Board objected, not thinking it at all necessary, however, the medical health officer sent for the above named doctor, and together they visited the case, which the doctor claimed was not small-pox. Medical health officer now wants council to pay for Dr. .....'s visit, $20. Will the council have to pay it?

2. Have township council power to pass by-law making barb wire fence a lawful fence?

1. We are of opinion that neither the local board of health nor the council of the township is liable for the payment of this account. The visiting physician was employed by the medical health officer on his own responsibility, and, apparently, contrary to the express instructions of the local board of health, and there is, or was, no contract of any kind between the visiting physician and the local board of health or council.

2. Yes. See subsections 2, 3 and 4 of section 545 of the Municipal Act.

Appeal Against Assessment by Council.—Liability of Council to Pay Damages for Sheep Killed when Dogs Known —Neglect of Collector.

292—A. O.—1. Our council wish to appeal against some assessments which they think too low. They propose instructing the clerk to make the appeals in the name of the corporation. Should they do so, can the council sit upon the cases, and can the clerk act as clerk of Court of Revision legally?

2. A ratepayer has sheep killed by dogs. They captured two dogs, and know the owners thereof, but there were four dogs concerned in the killing. Will the owners have to pay for all sheep killed or only a portion, and will the municipality have to pay a share of damages done?

3. Our collector of taxes neglected to serve a tax-bill upon a ratepayer when serving him with the forms, tax, etc., and it remained overlooked until there was a charge of five per cent. extra upon the taxes unpaid by by-law. The ratepayer was then served but would not pay the extra, but claims that had he been served with his tax-slip he would have got five per cent. discount, which makes a difference of ten per cent. to taxpayer. Now, who should lose this ten per cent., the collector or the municipality? The ratepayer was properly assessed, and knew of his property being taxed. On the other hand, it seems hardly fair that the collector should lose the ten per cent., as it was a clear case of oversight. Is there anything in the statutes covering such a case, or is it a matter of equity between ratepayer, collector and council?

1. If the clerk is an elector he may appeal. See subsection 3 of section 71 of the Assessment Act, and the court of revision can deal with the appeal.

2. Under the circumstances the municipality is not liable.

3. The ratepayer is not liable to pay the extra 5% under the circumstances, because he was entitled to receive notice from the collector in sufficient time to have enabled him to pay his taxes and avoid the extra charge of 5%. We do not think he is entitled to a rebate of 5% as a matter of law. The mistake was that of the collector, and he is liable for the loss.

Assessment of Type and Pressroom Furnishings.

293—G. A.—Kindly let me know if it is legal to assess the type and furniture in the pressroom of a printing office, and if so, what per cent. of cash value?

Yes, unless the property is under $100 in value (in which case it is exempt), it should be assessed at its actual cash value.

An Assessment Appeal.

294—LEX.—If a case is appealed to a Court of Revision for a reduction of assessment, and the court thinks from the evidence produced that the assessment is too low, have they a right to raise it without an ontside party appealing for an increase?

Yes. See subsection 20 of section 71 of the Assessment Act, as amended by section 5 of the Assessment Amendment Act, 1899.

Equalization of Union School Assessments.

295—R. G. R.—I beg to thank you for your letter of April 17th, re equalization of urban union school sections, and I think your opinion is indisputable. Now, it is a fact that lots Nos. 25 and 26, concession 2, W, have been united with L...., as a union section, for about forty years. The clerk of L.... get an abstract of assessment roll of the townsnip of W every year, and levied and collected L....'s school rate on our ratepayers on said lots, among said ratepayers being the G. T. R. Co., which passes through one of the lots, (No. 25.) Our assessor should equalize the rural unions on our boundary this year, and as the school house is in L...., the notice for equalization should come from their assessor. If no notice is sent, what course would you advise?

The duties the assessors of the several municipalities interested are required to perform, under section 54 of the Public Schools Act, 1901, are imperative, and if the assessor, mentioned in subsection 4, neglects or refuses to perform the duty required of him by this subsection, he can be compelled to do so by mandamus issued at the instance of any party or parties aggrieved by such neglect or refusal.

Requisite of a Drainage By-Law.

296—T. W. W.—In regard to draining, a river with well defined banks, from its source to its mouth, and in a state of nature carries down its course a very large body of matter. That while for the most part there is a gradual sloping of the land towards the river down which the water naturally flows; that the artificial drains constructed in many cases lessened the flow of water by taking it to other rivers, and in some cases has increased the flow of water upon the whole, leaving it about the same as in a state of nature. In draining this river the only object is to benefit the flats of bottom land, confining the water in a smaller channel, which comprise about six hundred acres.

1. In getting up a petition would we have to get a majority of the benefited parties in both townships, as it runs through two townships, or enough in the one to overbalance the benefited parties in the other township?

2. Could a by-law be held good if 5,100 acres is assessed for injury $27,000, and 600 acres benefited is assessed for $7,000 for benefit, or, in other words, if land is injured by the water from high lands to the extent of $27,000, when the river land has been relieved of the injury, had it ought to be benefited to the extent of $27,000 or more?

3. Could a drain be legally constructed to the township line, then in another township to a sufficient outlet, and not assess the other township for benefit? Could one assessed in the first appeal against such an asessment?

4. If a by-law having an injunction restraining the council from proceeding with payments of persons ordered by the council to work on by-law, and by-law was quashed, could the council be compelled to pay these men for work on by-law, it being quashed on the point of not having enough on petition for a majority, those payments being made after the court had quashed the by-law and injunction being raised?

5. Could a by-law stand if the assessment was as follows: Total assessment, $36,758.00, divided as follows: for benefit, $6,037.00; outlet, $322.90; injury, $27,648.27; township bridges, $2,750.00; fees, $3,000.00; farm bridges, $2,248; for land taken and damage to lands, $1,114.18; and only $2,639.55 is for benefit to lands?

1. To ascertain whether the necessary majority has signed a petition for drainage works, under section 3 of chapter 226, R. S. O., 1897 (the Municipal Drainage Act), regard must be had only to the resident and non-resident persons (exclusive of farmers' sons, not actual owners) as shown by the last revised assessment roll to be the owners of lands to be BENEFITED in any described area in any township, etc. The owners of lands assessed for "injuring liability," or "outlet liability," do not count for or against this petition. (See clause (a) of subsection 3 and clause (a) of subsection 4 of section 3 of the Act.) We are of the opinion that the petition must be signed by a majority of the owners of land in the whole area to be drained.

2. Not having the engineer's report, the township by-law passed in pursuance thereof, or a full statement of the facts before us, we cannot answer this enquiry.

3. The law as to continuing a drain into an adjoining municipality is to be found in section 59 and following sections of the Municipal Drainage Act. The proportion of the cost of the drainage work, which is to be borne and paid by the initiating and servient municipalities, respectively, is a matter which will have to be settled by the engineer employed to examine and report in the first instance, and afterwards by the drainage referee, or court of appeal on appeal from the decision of the drainage referee.

4. We do not know what kind of work you refer to, but all parties who performed any *bona fide* service for the municipality in respect of this by-law, before it was quashed, are entitled to receive their pay.

5. We cannot answer this question for the reasons given in our reply to question No. 2.

We may say that we do not think that you have read section 3 of the Drainage Act carefully, or if you did you do not understand it. If you did understand it you would not ask questions Nos. 2 and 5, because there is nothing in section 3 about the values of the lands to be assessed. The question always is: Is the petition signed by a majority in number of the resident and non-resident persons, etc., as shown, etc., to be the owners of the lands to be benefited in any described area, etc.

Council Cannot Pass By-Law Allowing Building of Fences on Highway.

297—A. E. N.—1. Has the township council authority to pass by-law allowing owners of land along highways to set their fences over the line, where wire is used for fencing?

2. If so, state section of Act granting such authority, also the limit fences may be set out over the line?

1. No.

2. Our answer to question number one renders it unnecessary to answer this.

Payment of Expenses of Parties Quarantined.

298—C. B.—Our township has an epidemic of small-pox and we have taken all steps to prevent the spread of the disease, and the question comes up as to who has to pay the expenses of isolation, quarantine, etc. We would like to know how far the township is responsible and in what manner?

Section 93, of The Public Health Act, makes provision for the isolation or quarantining of persons infected with, or who have been exposed to any of the diseases mentioned in sub-section 1, of section 92, of the Act, and for providing nurses and other assistance and necessaries for them, at their own cost and charge, or the cost of their parents or the persons liable for their support, if able to pay the same, otherwise at the cost and charge of the municipality. Under section 57, of the Act, it is the duty of the treasurer of the municipality, upon demand, to pay out of any moneys of the municipality in his hands, the amount of any order given by the members of the local board, or any two of them, for services performed under their direction by virtue of the Act.

Police Trustees Can Pass By-Laws for the Removal of Snow from Sidewalks.

299—P. K.—The police trustees of the village of B pass a by-law, requiring property owners to remove the snow off sidewalks, and if not done by a limited time, the by-law provides that the police trustees may hire the work done, and in default of payment of the owner or occupant, the cost shall be charged, as a special assessment, against such property and will be recovered in like manner as other municipal rates. Have the police trustees the power to pass such a by-law, or should their by-law provide that in default of payment by the owner or occupant, the cost to be recovered by complaint before a J. P.?

Section 52, of The Municipal Amendment Act, 1900, repeals section 49, of The Municipal Amendment Act, 1899, and substitutes another section therefor. This substituted section empowers the police trustees of any village to pass by-laws for the purposes mentioned in paragraph 1, of section 559, of The Municipal Amendment Act. A reference to the latter will show that it relates to the passing of by-laws for, amongst other things, the removal of snow, ice and dirt from sidewalks. This section also authorizes the insertion in such a by-law of clauses "providing for the cleaning of sidewalks and streets adjoining the property of persons who, for twenty-four hours, neglect to clean the same; and to remove and clear away all snow and ice, and other obstructions from such sidewalks and streets, at the expense of the owner or occupant, in case of his default, and in case of non payment, to charge such expenses as a special assessment against such premises, to be recovered in like manner as other municipal rates." There is no provision for recovering the cost of doing the work authorized by the above section before a J. P.

A D. & W. Drain Without Sufficient Capacity.

300—COUNCILLOR.—My neighbor has placed a dam on his side of the line fence over a tile drain constructed under the D. and W. Act, running from my place to his and thence on road to township ditch. At the line fence on my side is a catch basin to catch surface water, but, in times of freshets, the tile does not take water, which, therefore, runs on surface over drain in a natural depression. This dam now backs water on my land. Can I cause him to remove dam and how would I proceed?

We do not gather from what is stated that any obstruction has been placed in the TILE in the drain, but that a dam has been erected to keep back the flow of surplus surface water which the tile will not carry away in times of freshets. This being the case, we do not see that you can prevent the erection of the dam, by your neighbor, to protect his land. Your only remedy is an application under the Ditches and Watercourses Act, to have the drain, or tile therein, enlarged. (See section 36 of the Ditches and Watercourses Act, chapter 285, R. S. O., 1897.) This application cannot be made until after the end of a year from the completion of of the drain.

Law as to School Assessment.

301—BARNEY.—Section 70, Public Schools' Act, 1901, requires the township council to levy and collect $150.00 for every school that has been kept open the whole year. Section 70 requires a levy on the school section of such sums as are required by trustees. It seems to me that this is a subject upon which a good article could be written by one in possession of the required information. With such view would you kindly answer the following questions:

Under section 70 the amount is to be levied on the school supporters.

1. What constitutes a public school supporter?

2. A township being divided into school sections under section 12, Public Schools' Act, 1901, one section not having elected trustees, and having no school, are the residents in that section "public school supporters?"

3. Under these circumstances upon what part of the township shall the levy be placed:

4. The levy having been collected, what disposition shall be made of it? Is it to be paid out to each section for which it has been levied, and in such like amount, or is the levy under section 71 all the trustees are to get? Is the levy under section 71 to be in addition to that under section 70? Does section 71 cover all required by the trustees? What is the object of the levy under section 70? Is 70 known as a general levy, and 71 as a special levy? If so, what would a school debenture be called? Would not this require two columns for special rates in collector's roll? In levying these rates are they to be levied on resident and non-resident alike, or sufficiently high to collect the amount required from the resident ratepayers, leaving the non-residents as an asset to fall back upon? Suppose the trustees wanted $300 under section 71, if this is levied upon the whole rateable property, resident and non-resident alike, and by reason of non-resident and uncollectable taxes, there should only be $200 collected, is the levy under section 70 to supplement it, the balance, if any, to become a township asset? Do these levies require the passage of a by-law to establish them? Under section 70 is it the whole of the previous year, or is it six months of the current year? In issuing school debentures is the township to be saddled with the expense of obtaining by-law, registering, advertising and discount on sale of debentures?

5. Arrears of taxes. Section 162, R. S. O., 1897, directs that the whole amount is to be paid at once. Does this mean that, if it has been in arrears three years, the whole amount is to be paid at once? The above is amended by 62 Vic, chap. 27, section 15, giving the treasurer power to receive payment from time to time. Does this mean that a portion of any one year's taxes may be paid to the treasurer, or the total of one year at once? If any portion may be paid less than one year's tax I do not know how it would be kept account of in the register.

1. A public school supporter is a ratepayer whose school taxes are applicable to the support of the public schools in his municipality as distinguished from those whose taxes are applied towards the support and maintenance of separate schools.

2. Yes, except such as may be supporters of separate schools in the municipality, under the provisions of the Separate Schools Act, R. S. O., 1897, chapter 294.

3. The amount required to be raised by section 70, in the township should be levied ratably against and collected from the lands of ALL the public school supporters in the township, including those in the section in which no school-house has been erected. The total amount to be levied, however, under this section, would be reduced by the sum this section would have been entitled to had a school been kept open therein for the whole year or for six months or over.

4. This amount, when collected, is to be distributed amongst all the sections in the municipality entitled to receive a proportionate part thereof as provided in section 70. If the amount to which a school section is entitled, under section 70, is sufficient for its purposes for the year, the trustees will not require the levying of any amount, by the council, upon the ratepayers of that section under section 71. The school levies under sections 70 and 71 are separate and distinct; the one is paid by ALL the public school supporters in the township, the other by the ratepayers of each particular school section. If the sum the school section is entitled to under section 70, is sufficient for its purposes, that is the end of the matter for that year. If not, then the trustees should request the council, pursuant to section 71, to levy upon and collect from the ratepayers of their school section, such additional sum as may be required.

We cannot say what the legislators had in their minds when they enacted section 70 of the Public Schools Act, but we believe that their object was to equalize the burden of school taxes amongst the

several school sections in a municipality; to compel strong, wealthy and highly assessed sections to aid the weaker ones. The levy under section 70 is usually termed the "general school levy" and under section 71, the "trustees rate." Levies to meet the payment of school debentures are all "special levies." The rates levied under sections 70 and 71 and to meet the payment of any debenture or debentures should all be placed separately on the collector's roll. These rates should all be levied on residents and non-resident alike. If, from any of the causes you mention or otherwise, there should be a deficiency in the amount required by the trustees for their purposes during the year, they should borrow the amount they require until the receipt, by them, of the next annual levy, and should include the sum borrowed in the next estimates to be furnished, by them, to the municipal council, pursuant to subsection 9 of section 65. The levy of these amounts should be authorized by by-law of the council. The year referred to in section 70 means the year preceding the third Monday in the August next preceding the date when the levy is made for the purposes of the section. Subsection 4 of section 74 of the Act provides that "the expenses of preparing and publishing any by-laws or debentures and ALL OTHER EXPENSES incident thereto, shall be paid by the SCHOOL SECTION on whose behalf such debentures were issued, and the amount of such expenses may be deducted from any school rate collected by the municipal council for such school section."

5. Your township, being in a territory without county organization, is a "local municipality having power to sell lands for non-payment of taxes" and the treasurer may, under the authority of the section you last quote, accept and receive, from time to time, payment of the whole or any part of the taxes returned to him as in arrear, upon any parcel of land, etc. The part of the taxes in arrear, which he is then authorized to receive, need not necessarily be a whole year's taxes; any sum less or greater than a year's taxes, up to the whole amount in arrear, may be received.

Assessor May Correct Error Before He Returns Roll.

302—G. M. B.—An assessor makes an assessment and delivers the notice. A few days after, and before he returns the roll, from facts coming into his possession, he concludes that he has made too low an assessment on said property, makes another assessment at a higher rate and sends the notice thereof. Which is the legal assessment? Has the assessor not the right to correct an error he discovers he has made, before he returns the roll, on giving proper notice?

The assessment last made is the correct one. An assessor is quite within his rights in making an alteration in an assessment and notifying the party of the change before he returns the roll.

Assessment of Tenants of Government Property.

303—J. M.—A party in our township owned a lot containing eleven acres of land on which are five houses assessed to himself, and four tenants who are as yet, and likely to continue, in the occupation of such houses. Since the assessment was made the owner has sold the property to the Ontario government and made application for exemption from taxation. At the court of revision will those parties have to be struck off the assessment roll as F. M. F. or T. M. F., as the case may be, and entered on the manhood franchise list?

Subsection 2 of section 7 of the Assessment Act provides that "where any property mentioned in the preceding clause (that is, property vested in His Majesty for the public uses of the province) is occupied by any person otherwise than in an official capacity, the *occupant shall be assessed* in respect thereof, but the property itself shall not be liable." It will be therefore quite proper for the court of revision to strike the former owner of these premises off the assessment roll as F. and M. F. in respect of this property, but the several occupants (if their occupation is not in any official capacity) should remain on the roll as tenants of the portions they respectively occupy, and as manhood franchise voters.

Assessment of Rented Post Office.

304—A. C. S.—A owns a building, and rents a portion of it to the government for a post-office. The assessor assessed the whole building. A claims post-office is exempt. Is his claim tenable?

Subsec. 1 of sec. 7, of the Assessment Act, exempts "ALL property vested in or held by Her Majesty, or vested in any public body or body corporate, officer or person in trust for Her Majesty, or for the public uses of the province." In the case of Shaw vs. Shaw (12, U. C. C., P. 456) it was held that premises leased and occupied by the government for custom house purposes were exempt from assessment, and, in the case of the Principal Secretary of War vs. The Corporation of the City of Toronto, 22 U. C. Q. B., 551) it was similarly held where premises were leased and occupied by Her Majesty for military purposes. The judgments in these cases were confirmed and followed by the Supreme Court of Canada in Attorney-General of Canada vs. the City of Montreal (13 S. C. R., 352). In all the above cases there were leases under or by virtue of which the Crown was entitled to occupancy of the lands, and we are of the opinion that to exempt property owned by a private individual it must appear that the Crown is entitled to such occupancy. Where that is shown in the case of a post-office, such post-office will be exempt from taxation. But there are, no doubt, many cases in small country places where there are post-offices, but where there is no such right of occupancy, and where that is so, the assessor ought to assess the property, and where there is the right of occupancy in the crown, the assessor should assess all of the property except what is actually used for the purposes of the Crown. We understand that some owners of buildings, only a small part of which is used for a post-office, claim exemption for the whole building. When the assessor has any doubt as to whether a particular building should be exempt he should assess it, leaving to the owner his remedy to appeal.

Municipality Not Liable.

305—A SUBSCRIBER.—Early this spring one of our ratepayer's yearlings fell over the approach of one of our bridges. The owner of said animal allowed his cattle to run on the road and drink by the bridge. This bridge is as well protected as any other bridge of the kind in our township, and our municipal by-law prohibits all cattle from running on our roads till the 1st of June. Are we as a corporation compelled to pay for this animal?

We are of opinion that, under the circumstances stated, your municipality is not liable in damages for the death of this animal.

Treasurer and His Sureties—Disposition of Surplus Moneys in a Drainage Scheme.—Declaration of Office.—Payment of Costs of Drainage Appeal—Collector's Salary.—Assessment of Wrong Lot.

306—T. W. W.—1. Is it the duty of a treasurer to report at each regular meeting the amount of money, cheques and bank account held by him for township.

2. Is it the duty of a treasurer to report how his bondsmen or Guarantee Company is to the council.

3. The estimates in a by-law on a drain, such as fees, entry for clerk, etc., if the report is adopted as read, and if it did not require the full amount to cover expenses, such as publishing by-law, court of revision, extra work, for clerks superintending work, shall the amount be placed to the credit of the drain?

4. Should all officers of townships each and every year renew their declarations of office?

5. A drain came before the referee and was quashed. Should the council get a report, or some account of the same signed by the referee, to the amounts to pay, and to whom, or should we not receive some kind of a report from the same signed by the referee?

6. Can a collector get extras, such as postage and travelling expenses, if nothing was said about extras at the time he was appointed. He only gets $150.00 for collecting, the other collector got extras.

7. A lot was assessed wrong in this way. Lot 16 was placed on the roll as lot 17, and was returned to county treasurer as lot 17. Lot 16 changed hands, the party searched the books and found nothing against 16. One year later the council find that 16 paid no taxes in 1900. Now, who pays those taxes, or how can it be recovered?

1. Not unless the council imposes upon him this duty at the time of his employment. Section 292 of the Municipal Act requires the treasurer to "prepare and submit to the council, HALF-YEARLY, a correct statement of the moneys at the credit of the corporation, whose officer he is."

2. It is the duty of the council employing a treasurer, in each and every year, to inquire into the sufficiency of the security given by the treasurer and to report thereon. See the latter part of section 288. By subsection 3 of section 304, it is made the duty of the auditors to make a report upon the condition and value of the securities given by the treasurer for the due performance of the duties of his office. The treasurer is not required by the statutes to report from time to time the

state of his securities to the council, nor should the council accept his statements as conclusive of the facts stated.

3. These amounts should be credited to the drainage account, and the by-law should be amended by the council as soon as possible, pursuant to subsection 3 of section 66 of the Municipal Drainage Act (R. S. O., 1897, chapter 226), so as to provide for the levying of the proper rates according to the actual cost of the work.

4. All officers, who are appointed *annually* by by-law of the corporation must annually, before entering upon the discharge of the duties of their respective offices, make and subscribe the necessary declaration of office. If this officer is one who may, by law, be and is appointed for an indefinite period, the making of the declaration of office, subsequent to his appointment, and prior to his entering upon the discharge of the duties of his office is all that is required.

5. We presume that you refer to the costs of the appeal to the referee, which the municipality was ordered to pay. This being the case, the bill of costs, certified by one of the regularly appointed taxing officers, will be sufficient authority for the council to pay the amount. No doubt the council had a solicitor employed to look after their interests in the matter, and he will attend to this.

6. No. If this person accepted the office of collector at the salary fixed, namely, $150, and nothing was said at the time of his engagement about his being entitled to all or any of his disbursements, over and above this sum, he has no claim upon the council for anything over and above the $150.

7. The amount of these taxes cannot be collected from the present owner of lot 16, and it is very doubtful as to whether they can be collected from any one else, as they do not appear to come within the purview of section 166 of the Assessment Act.

A Defective Drainage By-Law.

307—P. X.—1. I drew a by-law for a drain in our township. Should any errors occur in my computing of the assessment schedule, would that invalidate the by-law?

2. Should the error affect only that part of lands and roads schedule belonging to the municipality generally.

3. Would the by-law be void, or how could the thing be arranged?

1. We are of opinion that errors of this kind in a drainage by-law will be good and sufficient grounds for quashing the by-law if an application be made for that purpose within the time prescribed by the statutes. One of the main objects to be gained by the publication of the by-law is to accurately inform parties interested of the amounts with which they are respectively chargeable for the carrying out of the drainage works. If these amounts are not properly stated in the by-law as published and finally passed by the council, this object would be defeated.

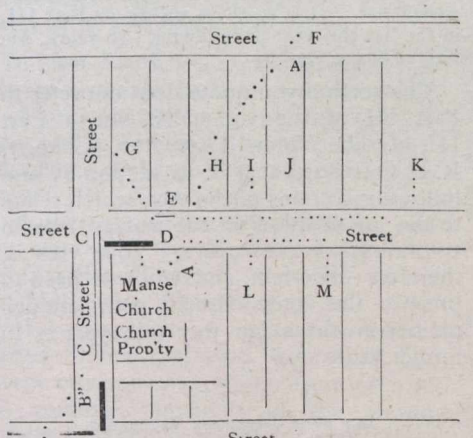
2. We do not see how an error could be made in computing one party's assessment without its affecting all the other parties interested in and chargeable with the cost of the carrying out of the drainage scheme.

3. The by-law would not be void, but it is liable to be quashed if an application be made for the purpose within the time prescribed. The only method of remedying the mistake is the abandonment of the by-law in which it occurs, and the publi cation and enactment, by the council, of a new by-law.

Removal of Water Injurious to Public Health.

308—G. J.—In the accompanying diagram I have marked the natural run of water through this incorported village. Since incorporation a covered drain or sewer has been run up as far as B; parties directly benefited paid for such, and parties living above that for out et only. Before this drain was put in, and some since. G, H, I, J, K, L, M, etc., drained their cellars, sinks and waste water in covered drains to E, where a culvert had been put across street, and then in an open drain to next street, and off into a ditch. Six years ago, before the village was incorporated, a new church was built on church property, and the church officials put in a box 10 x 10, and covered over so as to have a way to property from C to C. This has been satisfactory to the present time, but those who have cellars and sinks, etc., sometimes, and the village council at other times, have had the open part, about six or eight rods, cleaned out and re-cleaned, as it would get tramped in by cattle, till now it is lower than covered drain, and at least the water is not all taken away. This water is lying there stagnant, and the Board of Health has orderd its removal. The water above F has been cut off, so that practically all the water comes from the cellars, etc., drained to D.

1. Whose duty is it to remove this water?
2. What is the proper procedure?



Dotted line A, A, A, represents original run of water.

Heavy line B", big drain or sewer for draining cellars put in under Drainage Act.

Light double line, C to C covered drain, 10 x 10, put in by Church.

Heavy double line, C to D, open drain com plained of by Sanitary Inspector; D to E culvert put across road by council; E to F, underdrain, water cut off and run down another course G, H, I, J, K, L, M, cellars drained to D.

1 and 2. It is not stated (except incidentally in a note to the appended diagram it is mentioned that the big drain or sewer for was put in under the Drainage Act) under what authority these drainage works were con structed, whether under the Ditches and Watercourses Act (R. S. O., 1897, chapter 285), the Municipal Drainage Act (R. S. O., 1897, chapter 226) or as a local improvement, under section 664 and following sections of the Municipal Act. If the drain was originally constructed under the provisions of the Ditches and Watercourses Act, it may be enlarged or improved in such a way as to carry off all the water, on a reconsideration of the award at the instance of the municipality or any other party interested (see sec. 36, of the Act) if a year has elapsed since the completion of drainage work under award. If under Drainage Act, it can be repaired, enlarged or improved pursuant to either section 74 or 75 of the Act, according as the cost of the work will be $400 or under, or over that amount, or if the drain was put in by the municipality as municipal work, paid for out of the general funds or as a local improvement, steps should be taken to remedy the evil under the provisions of subsection 4 of section 668 of the Municipal Act. If the stagnant water is, or is likely to prove injurious to the health of the community, the council should take steps for its removal in some of the above ways.

Appointment of Township Clerks as Deputy-Returning Officers at Ontario Elections.

309—R. J. G.—Has section 67, chap. 9, R. S. O., 1897, (Election Act) been amended so that township clerks are deprived of the privilege of acting as deputy-returning officer at elections to the Legislative Assembly? If so, kindly refer to date of amendment.

Section 67 of the Ontario E'ection Act, R. S. O., 1897, chapter 9, was repealed by section 3 of chapter 5 of the Ontario Statutes, 1898 (61 Vic.) and a new section substituted. The latter section was repealed by section 1 of chapter 5 of the Ontario Statutes, 1899 (62 Vic, 2nd session) and the following section was thereby substituted: "The deputy-returning officer shall be a resident of the county or district in which the election is being held." The last mentioned section is now the law, so that it is optional with a returning officer whether he appoints the township clerk one of his deputy-returning officers or not.

Paving Brick or Cement Crossings.

310—J. M.—1. I have been instructed by one of our councillors to ask your opinion as to what kind of crossings you would advise, paving brick or cement?

2. Do you know what cement costs per yard?

1. Concrete, if properly made, is more durable than vitrified brick. Vitrified brick is usually less slippery than concrete, affording a more secure foothold for horses and pedestrians. The appearance is a matter of individual taste. For the majority of towns cement-concrete will be found the more economical, will give satisfaction and its use is to be recommended.

2. Local considerations, me hod of construction, the number of crossings to be laid at one time, etc., determine, more

or less, the cost as well as the relative merits of each material when used for street crossings. Laid on a four-inch concrete foundation with a one-inch sand cushion, the cost of brick crossings would be about $2.50 a square yard. On a one-foot broken stone foundation, extending well out on the sides, the cost would be about $2 a square yard. A cement-concrete crossing, as ordinarily laid, would cost about $1.50 or $1.75 a square yard. The cost on the work of broken stone, gravel, cement, sand, vitrified brick and other materials used, necessarily causes variation of cost for different localities.

Council's Power to Expropriate Gravel.

311—J. M. W.—Within the limits of this township there are a number of ridges containing gravel suitable for roads. Our council has not expropriated or purchased any of them, but is now anxious to do so. Two or three years ago the council of an adjoining municipality purchased an acre of the best gravel within our limits, without the consent of our council, and the said council are now hauling this gravel on their roads.

1. Can our council stop this by expropriating the pit?

2. Are the proceedings to be instituted the same as if dealing with an individual land owner?

We are of the opinion that a private individual has the right to sell gravel or other material to a township or anybody who desires to purchase it, and we do not think that the council of the municipality in which the gravel or material lies, can invoke the aid of court to prevent him from doing so, but if such municipality requires material for its roads the council can pass a by-law to search for material and take it and it can expropriate the material so sold if it has not been removed as against any purchaser, for the right of the purchaser cannot stand higher than that of the original owner.

Power of Telephone Company to Use Highways for the Erection of Poles and Wires.

312—SUBSCRIBER.—The N. A. Telephone Company are erecting a telephone line through our township, running along one of our most travelled highways. They have made no application to our township council for permission to construct said line, nor has any by-law ever been passed granting any such permission.

1. Is it necessary for them to ask leave from the municipal council where the line is passing through to have the use of the said highway?

2. Is it necessary for the council to pass a by-law granting such permission before they commence operations?

3. Has a telephone company any privileges of putting up poles alongside a bridge across a river, and fastening them to the bridge with bolts and wires?

4. Is there any distance poles should be erected from the travelled road?

1. You do not say how or when, or from what source this company received its charter of incorporation, or what provisions this charter contains. If the company is one connecting one province of the Dominion with another, or one whose works have been declared to be for the general benefit of Canada, it is within the jurisdiction of the Parliament of Canada, otherwise the Provincial Parliament can legislate on the matter. In either case, special authority should be conferred by the act incorporating the company, or its charter to allow it to use highways in the municipalities through which it runs, for the purpose of erecting its poles and wires.

2. Yes. Unless special authority to use the streets and highways has been conferred by the charter or act of incorporation.

3. No. Assuming that the bridge is along a highway, and the property of the municipality, the permission of the council must first be obtained, *unless* the charter or act of incorporation confers that power upon the company.

4. No But the poles must be erected and placed in such places as not to obstruct or impede traffic on the highway, and if it is necessary that the company should obtain the consent of the council before erecting the poles on the highways, it should be arranged at the time of granting such permission, that the poles should be erected and located by the company, under the direction of the council, or some officer or agent whom the council has appointed to look after the matter.

Part III. of the Voters' List not Suspended by 2 Ed. VII. Chap. 12, Sec. 2.

313—Q. U. E. D.—Ontario Statutes, 2 Ed. VII., chapter 12, section 2. Part III. of the Ontario Voters' List Act is suspended for three years from the passing of this Act, unless during the said three years it is otherwise ordered by the Lieutenant-Governor-in-Council. I understand this to mean that we will not require to include Part III in this year's voters' list That is, there will be no Part III. in the list this year or following two years. Am I right in my view?

The section you quote does not refer to Part III, of the voters' list, but to Part III, of The Voters' Lists Act, (Chap. 7, R. S. O., 1897,) that is, to section 61 and following sections of the Act, which relate to the preparation of the voters' lists in UNORGANIZED TERRITORY. Your view is, therefore, incorrect, and you will have to prepare the voters' list for your municipalitity in the same way this year as in former years.

Law as to Compulsory Vaccination.

314—J. M. D.—In your answer to question 231 in last WORLD, re compulsory vaccination, did you take into consideration clause 8, smallpox regulations?

No. The section you refer to is applicable only when the municipal council shall omit to make the arrangements necessary for compulsory vaccination, and there is nothing in Question 231, (1902,) to indicate that there has been such an omission. There is evidently some mistake, also, in the numbering of the chapter of the Revised Statutes mentioned in section 8, of the Smallpox Regulations, as Chap. 191, of the Revised Statutes, 1887, relatef to municipal light and heat.

Assessment of Tenants of Railway Lands.

315—W. H.—Acting on the advice given in your April number, our assessor assessed the tenants of the Canadian Pacific Railroad Company. The company appeal-, on the ground that its tenants are exempt under subsections 25 and 28 of section 7 of the Assessment Act, and their contention seems to be borne out by said clauses. They could only be assessed for personal property and household goods, and by subsection 28 of section 7 the latter cannot be assessed. One or two of them own pianos that are worth more than $100, the lowest amount for which personal property can be assessed, according to subsection 25 of section 7. Can you inform me, in your next issue, in what way these tenants can be assessed or taxes collected from them?

The question you refer to, (No. 193, 1902,) was: "Would it be lawful to assess these persons as tenants or occupants?" We answered this in the affimative, and still adhere to this view. We were not asked to pass an opinion as to whether they should be assessed for household furniture or other personal property, and as a consequence made no reference to this point. There is no doubt that subsection 28, of section 7, of the Assessment Act, exempts from assessment all household effects, of whatever kind, and subsection 25, all OTHER personal property, provided the net value does not exceed $100 in value. If the latter exceeds $100 in value, it should ALL be assessed at its actual cash value.

Preparation of Voters' Lists in Towns Electing Council by General Vote.

316—D. H. C.—Should persons who own property in several wards of a town, where the system of ward representation has been abolished, be placed in part 1 of voters' list in each ward where qualified? or should they be placed in part 1, only in the ward in which they reside, and in part 2 in the other wards? or are they entitled to be placed more than once on the list at all, regardless of the number of wards in which they might be qualified to vote in municipal elections?

The voters' list is made up in wards and polling subdivisions in the same manner as if ward representation still existed.

The abolishing by a municipality of the system of representation in the council by wards, does not of itself obliterate the division of the municipality into wards. Therefore, a voter who possesses the necessary qualifications as a municipal voter in more wards than one in a municipality, should be placed on the Voters' List in part one of the list for the ward in which he possesses the necessary qualification both as a legislative and municipal voter, and, in part two, of the list for each ward in which he possesses the necessary qualification as a municipal voter. If a person so placed on the voters' list votes more than once for councillor or alderman in a municipality in which councillors or aldermen are elected by a general vote, he is liable to the penalty mentioned in subsection 1a, of section 162 of the Municipal Act, enacted by section 9 of the Municipal Amendment Act, 1902.

Distribution of Commutation Money of Statute Labor Defaulters.

The attention of clerks and treasurers of townships, and of pathmasters appointed in rural municipalities (in which by-laws for the general commutation of statute labor have not been passed) is called to the duties imposed upon them respectively by section 110 of the Assessment Act, which provides for the collection of statute labor not performed. Unless careful attention be paid to the duties prescribed by this section, pecuniary loss to the road-divisions interested, and inaccuracies in accounts are almost certain to result. In the first place, all pathmasters in a municipality should take particular pains to have their statute labor lists in the hands of the clerk before the 15th day of August in the year for which they have been appointed, as required by subsection 1, as amended by section 9 of the Assessment Amendment Act, 1899.

Before so returning his list, the pathmaster should carefully note all defaulters in the proper column thereof. Subsection 1 of this section, as amended by section 6 of the Assessment Amendment Act, 1901, requires the clerk to place the amount of the commutation money so returned by the pathmasters, against the names of such defaulters in his collector's roll for the year in which the statute labor should have been performed, in case the lists in which their names appear, have been returned to him before the 15th day of August of that year (as they should have been) or within such time thereafter as will enable him to place such amounts on his roll before he is required, by law, to deliver it to the collector, otherwise on the collector's roll of the year next following, to be collected at the same time and in the same manner as ordinary municipal taxes.

When sending out his statute labor lists in the year following that in which the commutation money has been collected, the clerk should notify each pathmaster of commutation money collected from owners of property situated in his road division, during the previous year, and also send the township treasurer a certified list of the amounts due the divisions and names of respective pathmasters. Subsec. 2 of sec. 110, empowers the overseer or pathmaster to expend this amount upon the roads in his statute labor division, and also provides that he "shall give an order upon the treasurer of the municipality to the person performing the work." We draw attention to the fact that, in this instance, a pathmaster is not required to report to the council, and apply for its order or cheque in favor of parties doing the work, under his supervision, to the amount of the commutation money, which the clerk has notified him is at his disposal. He is authorized to give his personal order on the treasurer to and in favor of the person who has done the work and is entitled to receive the money, and the treasurer's duty, under this subsection, is to honor it.

Municipal Socialism in Australia.

T. George Ellery, in Spring Number of "Municipal Affairs."

Melbourne owns a stone quarry from which most of the road material required in the city and all "screenings" for foot pavements are obtained. It has been a commercial success, and has prevented an undue price being demanded by outside contractors. Sydney, Melbourne and Adelaide give public organ recitals. The first of these cities has a magnificent town hall, with seating capacity of 4,000, in which is placed "the largest, finest-toned and most powerful organ ever built." The cost of this organ was £16,300, and until recently the municipal council permanently retained Mons. Wiegand, a noted Belgian organist, at a salary of £500. Markets for vegetables, produce and cattle are controlled by the municipal council of Sydney. One of these, the Queen Victoria Market, is a magnificent pile of architecture, erected at a cost of over £750,000. The other Australian capital cities also maintain municipal markets, which are generally lucrative. Abattoirs are generally under municipal management, but those in Sydney are controlled by the state government.

The gas and electric lighting services are controlled in Sydney by private companies, but the city council is now taking steps to establish an electric lighting plant. There are in New South Wales seventeen country municipalities owning gas works. Melbourne owns and operates an electric plant, as do also some other cities.

In New South Wales, the tramway system (partly cable, partly steam and partly electric) is controlled by the state government, and is immediately under the superintendance of three state railway commissioners. In Melbourne, on the other hand, there is an extensive cable-car system, worked by the Melbourne Tramway and Omnibus Company, under lease from the Melbourne Tramways Trust. The Trust is composed of eighteen members, elected annually—seven from the Melbourne city council and one from each of the municipal councils of the eleven suburbs into which the Melbourne Tramway and Omnibus Company's statute authorizes the extension of the tramway lines. The Trust constructed all of the lines, amounting to 43½ miles of cable and 3¾ miles of horse traction, with money borrowed for the purpose upon the security of the revenues and properties of the municipalities, and the lines were leased for thirty-two years from July 1, 1884, to the Melbourne Tramway and Omnibus Company, who accepted the liability to keep the lines in repair, and properly furnished, to pay license fees for all cars, drivers and conductors, and municipal rates, and to pay to the Tramway Trust the interest payable upon the borrowed capital, with an addition of one and one-half per cent. during the first ten years, two per cent. during the second ten years, and three per cent. during the third ten years of the lease, to be invested by the Tramway Trust as a sinking fund, calculated to pay off the capital borrowed at the termination of the lease, when the lines (not the rolling stock) will revert to the municipal authorities in good working order, and free of cost. The total capital borrowed is £1,650,000 at four and one-half per cent. The sinking fund on December 31, amounted to £52,000, nearly all invested in Victorian municipal debentures.

The city of Launceston, although very small in comparison with the largest city centres, is municipally in some respects more advanced in its operations than any of them. It has charge of the sewerage, water and electric light works, undertaking not only the public work associated with these, but work for private individuals as well. It installs premises with fittings for electric light, either for cash, on the hire purchase system, or at a rental. It has charge of the thoroughfares, and from its quarries and works supplies stone and metal, and also executes private cementing and asphalting work. It has a fine public hall capable of seating three thousand persons, having a large stage, banquet-room and all the usual accessories, the whole being heated with hot water pipes. It provides a museum and art gallery, swimming, plunge and Turkish baths, (the latter heated on a system superior to any in Australia,) and recreation grounds, and has power to subsidize local bands.

Its provident fund rules compel thrift on the part of its employees, and practically establish the old age pension system. From this fund it advances money on building society principles to members to enable them to become property owners, so that even the lowest in position can early in his years of service have his own house to live in, and in his old age be the recipient of a small pension.

A judgment given by Meredith, C.J., recently is of interest to purchasers of property at tax sales. A lot was sold for taxes. The tax purchaser obtained a deed of the lot from the town in which the land was incorrectly described. The purchaser at the tax sale then approached the owner of the lot and got a deed from him, thinking that the mortgagor would be cut out by the tax sale deed. He built a house upon the lot, and then the mortgagor brought action to set aside the tax deed. It was held that sales for taxes mean sales for taxes, for which the land might rightly be sold.

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A new paving in London, Eng., is formed of big blocks made of partially pulverized stone obtained from Cornwall and South Wales, and held together by Trinidad pitch.

Legal Department.

J. M. GLENN, Q. C., LL. B.,
OF OSGOODE HALL, BARRISTER-AT-LAW.

Re City of Toronto Assessment Appeals.

Judgment on appeal by the city corporation from a decision of the County Judges of York, Halton and Ontario, upon the question of the assessment of the Bell Telephone Company, etc., in respect of their assessments for plant, including wires, poles, etc. Board of County Court Judges reduced the assessments as confirmed by the Court of Revision. The question upon the appeal was whether the Board of Judges were right in deciding that the act 1 Edw. VII. ch. 29, section 2 (O), made no difference in the mode of valuing the rails, poles, wires and other plant belonging to the companies, erected or placed upon the highways, which was held to be proper by the decision in re Bell Telephone Company and City of Hamilton, 25 A. R., 351, and re London Street R. W. Company. Held, Maclennan, J. A., dissenting, that the Board of Judges were right in so deciding. Per Osler, J. A.:—The new clause does no more than enable the assessor to assess their property all together in one ward, or to apportion the assessment among two or more of the wards, as he may deem it convenient. It merely removes one of the difficulties pointed out in the cases before decided, but does not extend the principle on which the value of such property, apart from the franchise of the company or its use to a going concern, is to be ascertained by the application of the rule provided by section 28, of the Assessment Act, for ascertaining its value. It is now to be valued as if it were all in one ward. That is to say, as a whole or as an integral part of a whole, but still without reference to its connection with a franchise or its use as the property of a going concern. The learned chairman of the board, (McDougall, Co. J.,) has given a very full and satisfactory exposition of the new section, to which nothing can be added, except that the decisions by which the Court of Appeal is bound require much more comprehensive legislation to remove their effect than anything which is found in that clause. Per Maclennan, J. A., (dissenting):—The injunction to assess all property at its actual cash value still remains. So does the mode of appraisement as if in payment of a just debt from a solvent debtor. But the obligation to assess in several wards is swept away, and it may be assessed all together in any one ward, or it may be apportioned amongst two or more wards, and in either case it shall be valued as a whole, or as an integral part of a whole. Each of the companies owns, and is assessed for, freehold land in the ordinary sense, as well as for their rails, poles, wires, etc., upon the public streets, and the two kinds of real estate are connected, both in construction and in use, and, taken together, answer the description in the sub-section "real property belonging to....any....incorporated company, and extending over more than one ward in any city," and what the section says is, that it may be assessed together in any one of such wards. That is what has been done here. In valuing the land of the company extending over several wards as a whole, the value of the rails, poles, wires, etc., must be included as a part of the whole. But even if it becomes necessary to value a part of the company's real property separately, as in the case of that part which may be in a township outside of a city or town, where, perhaps, it has no land other than the rails, poles, wires, etc., on the public highways, the result must be the same. It must be the full value of these fixtures to the company, because they must be valued as an integral part of the whole. It plainly means that it is not to be valued without reference to the whole of which it is a part, but as an essential part of the whole—as something without which the whole would be incomplete. It is to be valued, in short, at what it is worth to the debtor, being solvent, as a part of the whole, so that being solvent, he would be willing to let it go at that value in payment of a debt. Appeal dismissed with costs.

Re Township of Nottawasaga and Co. of Simcoe.

Judgment on appeal by the county corporation from order of a Divisional Court dismissing an appeal from an order of Boyd, C, in Chambers, refusing to prohibit the Judge of the County Court of Simcoe from proceeding with the hearing and determination of an appeal by the township corporation from the equalization by the county council of the assessment rolls for the year 1900, of the various municipalities within the county. The motion was made on the grounds that the township had not duly authorized the appeal, because a by-law was necessary for the purpose, and one had not been passed, and that the County Judge had no jurisdiction to proceed with the hearing of the appeal after the 1st August, section 88, sub-section 7, of the Assessment Act, providing that judgment shall not be deferred after that date. Held, that the section is imperative. Per Osler, J.A.:—The object aimed at by the equalization of the assessment rolls is to correct, as nearly as may be, eccentricities and unreasonable differences in assessments as taken in the various local municipalities, so that the incidence of the county rates may be fairly distributed over the whole of the assessable property in the county. The aggregate of the valuation of the various local municipalities appearing upon their assessment rolls as finally revised and corrected is not to be distributed ; what is taken or deducted from the valuation of one is to be placed upon and distributed over the valuations of another of the others, and thus the whole assessment of the county is equalized. The proportion which each municipality is to contribute towards the "county rate" is, therefore, ascertained by the county by-law, to be passed when, and not until, the rolls have been equalized by the council, sections 87 94. For this purpose, as it would appear from section 88, the council need not await the result of an appeal. The rolls for the current financial year could not be utilized, because they may not be finally completed until the first of August, and the township clerk has ninety days thereafter in which to send copies of them to the county clerk. Therefore, as section 87 provides, it is the revised rolls for the preceding financial year which are to be examined and equalized, and it is the amount of the property assessed and valued in these rolls as equalized which forms the basis on which the apportionment of the county's requirements among the various local municipalities is made ; section 91. The appellants rely upon section 8, subsection 2, of the Interpretation Act, which enacts that the word "shall" shall be construed as imperative, but that is subject to the qualifications of section 7 (1), "except in so far as the provision is inconsistent with the intent and object of such act, or the interpretation which such provision would give to any word, expression or clause is inconsistent with the context." It rests upon the respondents to show that the word "shall" is to be read in section 85, subsections 4 and 7, in the permissive sense, and they have failed to do so. The only substantial argument is that the legislature has given an appeal which may become abortive if, by reason of delay of the parties, or of the time occupied in hearing it, or the delay of the judge in giving judgment after argument, it is not disposed of by the 1st August. But the words of the subsection are in the emphatic negative form, and there is an excepted case, "except as provided in sections 58-61," in which it seems to be implied that judgment may be deferred. The force of this exceptive language as aiding the construction of what follows is not weakened by the fact that it may not be very easy to apply the exception. Then, as to the argument from inconvenience. The rolls have been in fact equalized by the county council. If the appeal drops, the council proceeds upon its own decision, which operates only upon the taxation of the present year. There is no such serious inconveniences involved in the loss of the appeal for a single year as to warrant the court in giving the language of subsection 7 less than its full force and treating it as otherwise than an absolute prohibition against continuing the appeal after the date specified as the last day for giving judgment thereon. Appeal allowed with costs here and below, and order made for prohibition.